

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

WILLIE T. SMITH,

Plaintiff,

v.

D. JONES,

Defendant.

Case No. 3:20-CV-0504-MMD-CLB

**ORDER DENYING MOTION FOR  
SUMMARY JUDGMENT, WITHOUT  
PREJUDICE, AS PREMATURE AND  
DENYING MOTION TO STRIKE  
AS MOOT**

[ECF Nos. 15, 21]

This case involves a civil rights action filed by Plaintiff Willie Smith (“Smith”) against Defendant D. Jones (“Jones”). Currently pending before the Court is Smith’s motion for summary judgment. (ECF No. 15.) Jones opposed the motion and filed an errata, (ECF Nos. 17, 19). Smith replied and moved to strike the errata. (ECF Nos. 18, 21).

Smith’s motion for summary judgment was filed on September 1, 2021 – two weeks before Jones filed an answer and before discovery commenced. (ECF No. 22.) Motions for summary judgment can be filed at any time but are often denied as premature when submitted before the parties have had time to conduct at least some discovery. *Celotex Corp. v. Catreet*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (“[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery....”); *see also Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070, 1100 n.15 (9th Cir. 2009) (stating that summary judgment was inappropriate where defendant had not answered the complaint and it was “uncertain which allegations are in dispute, much less which disputes might raise genuine issues of material fact”). Here, the motion for summary judgment was filed before the answer was filed and thus before it was clear what issues would be in dispute. In addition, the motion was filed before discovery commenced. In fact, the court has not yet entered a discovery plan and scheduling order in this case. Therefore, the parties have not yet had a chance to begin discovery to investigate what evidence, if any, supports Smith’s claims or any asserted

1 defenses.

2 As such, Smith's motion is premature and is **DENIED**, without prejudice, on that  
3 basis. (ECF No. 15). As this motion is denied without prejudice, Smith may re-file a motion  
4 for summary judgment after discovery has been conducted. Finally, as the Court denies  
5 the motion for summary judgment, Smith's motion to strike is also **DENIED** as moot. (ECF  
6 No. 21.)

7 **IT IS SO ORDERED.**

8 **DATED:** December 6, 2021.

9   
10 \_\_\_\_\_  
11 **UNITED STATES MAGISTRATE JUDGE**  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28